



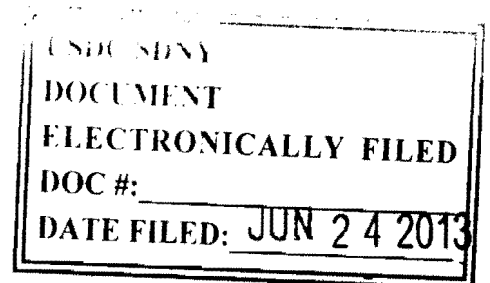
DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F STREET NE
WASHINGTON, D.C. 20549-4010

MATTHEW T. MARTENS
CHIEF LITIGATION COUNSEL

DIRECT DIAL: (202) 551-4481
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June 21, 2013



Via Electronic Mail (ForrestNYSDCChambers@nysd.uscourts.gov)

Honorable Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

RE: U.S. Securities & Exchange Commission v. Fabrice Tourre
Civil Action No. 10 CV 3229 (KBF)

Dear Judge Forrest:

Pursuant to Your Honor's Individual Practices 2(f) and Local Civil Rule 37.2, I write to request that the Court require the defense, in advance of the July 1 due date for the joint pretrial order, provide the SEC with a list of *all* ACA recordings that it intends to use at trial. I have corresponded and spoken by telephone with defense counsel in an effort to resolve this issue, but those efforts have proven unsuccessful. Given that the joint pretrial order is due to the Court one week from Monday, I thought it important to bring this matter to the Court's attention immediately.

In a brief filed yesterday in response to Keith Gorman's motion to quash his trial subpoena, the defense stated that it "will not complete [its] review of the newly produced ACA audio files . . . until the start of trial." (Dkt. No. 350, at 3). At the same time, the defense represented that defendant Tourre has "*already* identified audio files on which Mr. Gorman appears that he intends to introduce at trial." (*Id.* (emphasis added)). Similarly, the defense represented, in its brief in opposition to the motion to quash Mr. Westreich's trial subpoena, that it "has *already* identified (and intends to use at trial) additional audio files on which Mr. Westreich appears." (Dkt. No. 352, at 3 (emphasis added)). In addition, defense counsel represented to the Court that, as of last Friday, the defense was "about 70 percent through [their] review of the tapes." (Ex. A, 6/14/13 Hearing Tr. at 70).

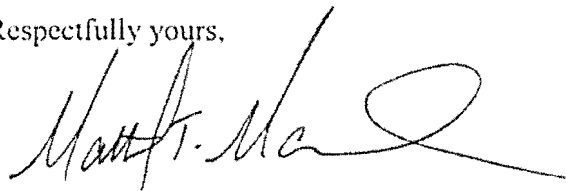
The defense advised today that by the close of business on Monday it will provide the SEC with a list of the recordings that it intends to introduce in its case-in-chief based on its incomplete review of the recordings to date. However, the defense has not committed to provide a complete list to the SEC in advance of the July 1 deadline for the joint pretrial order.

Page 2

The SEC does not believe that a continued addition of ACA recordings to the defense exhibit list up “until the start of trial” is consistent with this Court’s scheduling order. The scheduling order provides that the joint pretrial order, which includes the parties’ respective exhibit lists, is due on July 1. (Dkt. No. 259, at 2). The parties must confer and raise objections about the exhibits on those lists as part of the joint pretrial order. **Accordingly, the SEC respectfully requests that the Court direct the defense to disclose to the SEC those recordings that it intends to use at trial reasonably in advance of July 1.**

I also note that, in its brief in response to Mr. Gorman’s motion, the defense represented to the Court that “the SEC has refused to confirm that it will not seek to introduce additional ACA audio files, other than the January 17 Call, at trial.” (Dkt. No. 350, at 3). This is plainly incorrect. As the enclosed e-mail exchange shows, the SEC offered earlier this week to exchange with the defense today the lists of audio recordings that each side proposes to use at trial. (Ex. B). The SEC received no response to that offer prior to the defense filing.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Matt T. Martens", with a large, stylized flourish at the end.

Matthew T. Martens
Chief Litigation Counsel

cc: All Counsel of Record (via electronic mail)

Enclosures

Exhibit A

1

D6ersecm

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 SECURITIES EXCHANGE COMMISSION,

4 Plaintiff,

5 v.

10 Civ. 3229 (KBF)

6 FABRICE TOURRE,

Argument

7 Defendant.

8 -----x

9 New York, N.Y.

June 14, 2013

11:10 a.m.

11 Before:

12 HON. KATHERINE B. FORREST

13 District Judge

14
15 APPEARANCES

16
17 MATTHEW T. MARTENS

17 BRIDGET M. FITZPATRICK

18 Attorneys for Plaintiff

19 ALLEN & OVERY LLP

20 Attorneys for Defendant

20 BY: ANDREW RHYS DAVIES

21 PAMELA R. CHEPIGA

21 BRANDON D. O'NEIL

22
23 JOHN P. COFFEY

23 Attorney for Defendant

24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

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D6ersecm

1 employer would not want him to come here, and there has been no
2 discussion about any costs, for him to take time off to fly
3 here and to have lodging. So we intend to move to quash if
4 they do not.

5 THE COURT: When are you folks, and I'm going to hear
6 from Ms. Chepiga, intending to --

7 MS. HEADLEY: Hopefully Monday or maybe later today,
8 depending on how quickly I get back to the office. He has been
9 deposed twice, once in this action at least and once also in
10 connection with the SEC investigation. So there is testimony
11 that could be used.

12 THE COURT: Can you spell your last name.

13 MS. HEADLEY: H-E-A-D-L-E-Y.

14 THE COURT: Thank you, Ms. Headley.

15 Ms. Chepiga, this is really sort of a preview, because
16 they have not yet made their motion to quash, so you will have
17 a further opportunity to address any arguments they make.

18 MS. CHEPIGA: Just as a heads-up, your Honor, his
19 deposition was taken by us through tapes, and his tapes are
20 being produced. We had no opportunity to question him about
21 his tapes, which we are about 70 percent through our review of
22 the tapes. We haven't finished it yet. I assume that we would
23 use the tapes at trial to question him.

24 It is our understanding, I believe, from his
25 testimony, that unless he has changed his citizenship, he is a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Exhibit B

From: [Martens, Matthew](mailto:Martens.Matthew)
To: ["Andrew.Rhys.Davies@allenoverly.com"](mailto:Andrew.Rhys.Davies@allenoverly.com); ["Pamela.Chepiga@allenoverly.com"](mailto:Pamela.Chepiga@allenoverly.com); ["Brandon.O'Neil@AllenOverly.com"](mailto:Brandon.O'Neil@AllenOverly.com); ["seancoffey78@gmail.com"](mailto:seancoffey78@gmail.com)
Cc: [Simpson, Richard](mailto:Simpson.Richard); [Schultz, Christian](mailto:Schultz.Christian); [Fitzpatrick, Bridget](mailto:Fitzpatrick.Bridget); ["Allie.Cheatham@AllenOverly.com"](mailto:Allie.Cheatham@AllenOverly.com)
Subject: Re: SEC v. Tourre
Date: Wednesday, June 19, 2013 12:58:20 PM

Andrew,

We could meet on Monday to discuss voire dire and jury charge. Tuesday does not work for us to meet regarding exhibits and deposition designations, but we could do that on Wednesday.

As for recordings, we are happy to agree to a date on which we each side identifies the recordings that each side intends to use. We would propose that this occur on Friday, but we are open to suggestions on that point.

Regards,

--Matt

From: Andrew.Rhys.Davies@allenoverly.com [mailto:Andrew.Rhys.Davies@allenoverly.com]
Sent: Wednesday, June 19, 2013 12:17 PM
To: Martens, Matthew; Pamela.Chepiga@AllenOverly.com <Pamela.Chepiga@AllenOverly.com>; Brandon.O'Neil@AllenOverly.com <Brandon.O'Neil@AllenOverly.com>; seancoffey78@gmail.com <seancoffey78@gmail.com>
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Allie.Cheatham@AllenOverly.com <Allie.Cheatham@AllenOverly.com>
Subject: Re: SEC v. Tourre

Matt:

Now that we have Judge Forrest's ruling, we propose to get you our supplemental exhibits and exhibit objections on Friday. Then we propose to have the meet and confer on the jury charge and voir dire on Monday and the meet and confer on the exhibits and deposition designations on Tuesday.

We have to respond to the motions to quash the Lucas Westreich and Keith Gorman subpoenas tomorrow. As ACA has now produced telephone recordings from their lines, to respond to these motions we need to know whether the SEC intends to use any ACA calls in addition to the January 17 call. Please would you let us know.

Regards,

Andrew

From: Martens, Matthew [mailto:MartensM@SEC.GOV]
Sent: Wednesday, June 19, 2013 11:48 AM
To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com' <seancoffey78@gmail.com>
Cc: Simpson, Richard <SimpsonR@SEC.GOV>; Schultz, Christian <SchultzC@SEC.GOV>; Fitzpatrick, Bridget <FitzpatrickBr@SEC.GOV>; Cheatham, Allie:LT (NY)
Subject: RE: SEC v. Tourre

Andrew,

Just following up as to a proposed time.

Regards,

--Matt

From: Martens, Matthew

Sent: Tuesday, June 18, 2013 7:05 PM

To: 'Andrew.Rhys.Davies@allenoverly.com'; 'Pamela.Chepiga@AllenOverly.com'; 'Brandon.O'Neil@AllenOverly.com'; 'seancoffey78@gmail.com'

Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; 'Allie.Cheatham@AllenOverly.com'

Subject: RE: SEC v. Tourre

Andrew,

I have spoken with Mr. Davidson about his willingness to accept service, as I am not his counsel. He advised that you can email a subpoena to him at andy@ad-co.com. Of course, this should not be taken as our agreement that Mr. Davidson can be called as a fact witness by you. To the contrary, we intend to raise that issue with the Court shortly.

We are available tomorrow for a scheduling call. Please propose a time.

Regards,

--Matt

From: Andrew.Rhys.Davies@allenoverly.com [<mailto:Andrew.Rhys.Davies@allenoverly.com>]

Sent: Tuesday, June 18, 2013 6:42 PM

To: Martens, Matthew; Pamela.Chepiga@AllenOverly.com; Brandon.O'Neil@AllenOverly.com; seancoffey78@gmail.com

Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Allie.Cheatham@AllenOverly.com

Subject: Re: SEC v. Tourre

Matt:

We raised with you several weeks ago whether you can facilitate our service of a trial subpoena on Andrew Davidson. Please would you let us know, failing which we will make our own arrangements tomorrow.

Please would you also let us know whether you are available tomorrow for the scheduling call referenced in Sean's email earlier this afternoon.

Regards,

Andrew

From: Martens, Matthew [<mailto:MartensM@SEC.GOV>]

Sent: Tuesday, June 18, 2013 05:43 PM

To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com' <seancoffey78@gmail.com>

Cc: Simpson, Richard <SimpsonR@SEC.GOV>; Schultz, Christian <SchultzC@SEC.GOV>; Fitzpatrick, Bridget <FitzpatrickBr@SEC.GOV>

Subject: SEC v. Tourre

Counsel,

Please note that hard copies of the SEC's motions *in limine* filed yesterday and today were or are being delivered to your offices, as set forth in the certificates of service, in accordance with Federal Rule of Civil Procedure 5(b)(2)(B).

Regards,

--Matt

Matthew T. Martens
Chief Litigation Counsel
U.S. Securities and Exchange Commission
Division of Enforcement
100 F Street, NE
Washington, DC 20549
(202) 551-4481

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